

# HOUSE . . . . . No. 2666

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By Mr. Marzilli of Arlington, petition of J. James Marzilli, Jr., for legislation to further regulate hospital services in the Commonwealth. Public Health.

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## The Commonwealth of Massachusetts

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In the Year Two Thousand and Five.

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### AN ACT FURTHER REGULATING HOSPITALS.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Chapter 111 of the General Laws is hereby  
2 amended by inserting after section 5R the following section:—

3 Section 5S. The department of public health shall annually, by  
4 the first of October, make a determination of which acute hospi-  
5 tals and hospital services in the commonwealth are needed to pro-  
6 tect the health of their communities. The department shall  
7 consider the following factors, among others, in making its deter-  
8 mination:

9 (a) the availability of needed emergency and non-emergency  
10 inpatient and ambulatory hospital services to the citizens of each  
11 community or catchment area, (b) standards of travel time for  
12 those citizens, (c) financial accessibility and openness to serving  
13 persons vulnerable to deprivation of needed care, (d) acceptability  
14 and ease of use, (e) overall need for hospital care in each commu-  
15 nity, in light of the demonstrated comparative cost, safety, and  
16 efficacy of hospital care and its alternatives.

17 In its determinations, the department shall give particular con-  
18 sideration to the needs of low-income, uninsured, and other resi-  
19 dents of the commonwealth who are especially vulnerable to  
20 underservice.

21 In annual revisions of the listing of essential acute hospitals and  
22 hospital services, the department shall evaluate individual hospi-  
23 tals in the light of any changes in the services or behavior of other  
24 nearby hospitals.

25 The department shall also set standards for identifying hospitals  
26 in danger of closing, or of changing services in ways that could  
27 harm their communities.

28 Then, the department will apply those standards and identify  
29 hospitals in danger of closing, or of changing services in ways  
30 that could harm their communities, and work pre-emptively to  
31 preserve all such hospitals deemed needed by their communities.  
32 All acute care hospitals in receivership, considered by informed  
33 persons to be at risk of receivership, or otherwise predicted by  
34 sound methods of be vulnerable to closing, changing, or reducing  
35 services in ways that could harm their communities shall be par-  
36 ticularly scrutinized for inclusion on the list of essential acute care  
37 hospitals. Such pre-emptive work shall include technical and  
38 financial assistance, as described subsequently.

1 SECTION 2. Said chapter 111 is hereby further amended by  
2 inserting after section 70F the following seven sections:—

3 Section 70G. The department may bring an action in the supe-  
4 rior court department of the trial court requesting the appointment  
5 of a receiver to operate a hospital. Before the department brings  
6 such an action, a hospital administrator designated by the commis-  
7 sioner shall be informed that the department intends to bring such  
8 an action and shall be informed of the reasons for the decision to  
9 bring such an action. Said administrator may submit his recom-  
10 mendations concerning the hospital proposed for receivership  
11 within two business days after receiving the above information.  
12 After said two-day period, the department, in its sole discretion  
13 may bring an action in the superior court department described in  
14 this section. A patient residing in the hospital's primary service  
15 area, or the guardian of such a patient, may petition the depart-  
16 ment of public health to seek a receivership under this section. If  
17 the department denies such petition or fails to commence action  
18 within five days, the party bringing the petition may bring suit in  
19 the superior court department for the appointment of a receiver or  
20 other appropriate relief under this section. Upon filing of this suit,  
21 a patient or guardian shall serve a copy of the complaint on the  
22 department. Prior to any hearing for the appointment of a receiver,  
23 the department shall file, and the court shall consider, an affidavit  
24 made under oath describing the results of any investigation con-

25 ducted by the department, including a statement of any findings  
26 with respect to the resident's petition and the reasons for not filing  
27 an action pursuant to this section, and shall append thereto the two  
28 most recent reports of deficiencies in that hospital. Nothing in this  
29 chapter shall be construed as abrogating or superseding any  
30 common law or statutory right of any person to bring an action  
31 requesting appointment of a receiver to operate a hospital.

32 The court shall issue a short order of notice and, where an  
33 emergency is alleged, set the matter for hearing within five days  
34 after filing of the action. In all other cases, a hearing shall be set  
35 within two weeks. A receiver shall be appointed immediately, on  
36 an ex parte basis, if it appears by verified complaint or by affi-  
37 davit that there are grounds for the appointment of a receiver and  
38 that immediate appointment is necessary to prevent harm to the  
39 patients.

40 The court will name as receiver the commissioner of public  
41 health or his/her designee.

42 Appropriate grounds for establishing a receivership under this  
43 section shall be any of the following:

44 (a) to assure the temporary continued operation of the hospital  
45 when there is a substantial risk of its closing before adequate  
46 arrangements have been made for the transfer of its patients;

47 (b) to maintain any needed health care services for residents  
48 within the service area of the hospital when such services are not  
49 otherwise available or reasonably convenient to the service area;

50 (c) to maintain any health care services needed by residents  
51 within a service area of the hospital who are particularly vulner-  
52 able to medical underservice or denial of needed medical services;

53 (d) to secure the continued operation of effective or potentially  
54 effective, low-cost facilities;

55 (e) to protect the lives and safety of patients when the hospital  
56 is operating without a license or a valid, completed application for  
57 licensure on file with and awaiting action by the department of  
58 public health, or if the department has denied, revoked, or refused  
59 to renew a license, or has initiated license denial, revocation, or  
60 non-renewal procedures and the lives, health, safety, or welfare of  
61 the patients cannot be adequately assured pending the full hearing  
62 and decision on the matter;

63 (f) a declaration by the governor of a public health emergency  
64 pursuant to section 2A of chapter 17, if the declaration, by its  
65 terms, is applicable.

66 A receiver appointed hereunder shall not take any actions or  
67 assume any responsibilities inconsistent with this purpose.

68 No person shall impede the operation of a receivership created  
69 under this section. There shall be an automatic stay for a sixty-day  
70 period subsequent to the appointment of a receiver, of any action  
71 that would interfere with the functioning of the hospital, including  
72 but not limited to cancellation of insurance policies executed by  
73 the licensee, termination of utility services, attachments or set-offs  
74 of resident trust funds and working capital accounts, and reposses-  
75 sion of equipment used in the hospital.

76 Section 70H. When a receiver is appointed, the licensee shall  
77 be divested of possession and control of the hospital in favor of  
78 the receiver. With the approval of the court, the receiver shall  
79 have authority to remedy violations of federal and state law and  
80 regulations governing the operation of the hospital; to hire, direct,  
81 manage and discharge any consultant or employees, including the  
82 administrator of the hospital; to receive and expend in a reason-  
83 able and prudent manner the revenues of the hospital; to continue  
84 the business of the hospital and the care of the patients; to perform  
85 those acts necessary or desirable to accomplish the purpose of the  
86 receivership; to perform regular accountings and make periodic  
87 reports to the court; and to exercise such additional powers and  
88 perform such additional duties, as the court may deem appro-  
89 priate.

90 The receiver shall apply the current revenues of the hospital to  
91 current operating expenses and, subject to the following provi-  
92 sions, to debts incurred by the licenses prior to the appointment of  
93 the receiver. The receiver shall ask the court for direction in the  
94 treatment of debts incurred prior to this appointment where such  
95 debts appear extraordinary, of questionable validity, or unrelated  
96 to the normal and expected maintenance and operation of the  
97 facility, or where payment of debts will interfere with the pur-  
98 poses of the receivership. Priority shall be given by the receiver to  
99 expenditures for current, direct patient care.

100 Revenues held by or owing to the receiver in connection with  
101 the operation of the hospital shall be exempt from attachment and  
102 trustee process. Any retroactive payment that may be due or  
103 owing to the hospital as the result of a retroactive rate adjustment  
104 shall be disposed of in accordance with the orders of the court,  
105 after it considers competing claims to said payments.

106 The receiver shall not close the hospital without leave of court.  
107 In ruling on the issue of closure, the court shall consider the best  
108 interest of the residents of the commonwealth and the patients and  
109 the possibility of transferring them to suitable, alternative place-  
110 ments; the rights, interests and obligations of the licensee, the  
111 owner, the mortgagees, and other secured parties and lienholders;  
112 the licensure status of the facility; the condition of the real estate  
113 with respect to state and federal construction requirements and  
114 any other factor which the court deems relevant.

115 If the court has approved closure of the hospital, the receiver  
116 shall make major repairs to the real or personal property of the  
117 hospital but only to the extent necessary to prevent or remove  
118 jeopardy to the health, safety or welfare of the patient. If the court  
119 has not directed closure of the hospital, the receiver may make  
120 such repairs but only to the extent necessary to prevent or remove  
121 jeopardy to the health, safety or welfare of the residents or to min-  
122 imally qualify the hospital for continuing participation in the med-  
123 ical care and assistance programs, established under chapter one  
124 hundred and eighteen E, or in the program of health insurance for  
125 the aged and disabled under Title XVIII of the Social Security Act  
126 (P.L.-89-97).

127 In the event that a receiver appointed under section seventy G  
128 does not have sufficient capital to advanced for major repairs or  
129 improvements, the receiver may petition the court for permission  
130 to apply to the department for a loan. Notice shall be given to the  
131 owner of the real estate, the licensee, the department, and to any  
132 mortgagee and other secured parties and lienholders of record.  
133 The court shall after hearing, authorize the receiver to apply for  
134 such assistance if it determines that the hospital should not be  
135 closed, and the commissioner certifies that the repair or improve-  
136 ment is necessary to prevent or remove jeopardy to patients or to  
137 minimally qualify the facility for participation in said medical  
138 care and assistance program and said program of health insurance

139 for the aged and disabled; or it determines that the hospital should  
140 be closed and the commissioner certifies that the repair or  
141 improvement is necessary to prevent jeopardy to patients for the  
142 limited period of time that they are awaiting transfer. The pur-  
143 poses of this provision shall be to protect patients and to prevent  
144 the closure of facilities which, given proper management, are  
145 likely to be viable operations. This section shall not be construed  
146 as a method of financing major repairs or capital improvements to  
147 hospitals which have been abandoned because the licensee has  
148 been unable to secure financing by conventional means.

149 Upon court approval, the receiver may apply to the department  
150 of medical security, which shall administer financial assistance  
151 from the essential hospital preservation trust fund.

152 The licensee or the owner may apply to the court to determine  
153 the reasonableness of any expenditure by the receiver.

154 Section 70I. A receiver shall not be required to honor any lease,  
155 mortgage, or secured transaction entered into by the licensee of  
156 the hospital if the court finds that the agreement was entered into  
157 for a fraudulent purpose or to hinder or delay creditors or that the  
158 rental, price or rate of interest required to be paid under the agree-  
159 ment is in excess of a reasonable rental, price or rate of interest at  
160 the time the agreement was entered into; or the agreement is unre-  
161 lated to the operation of the hospital.

162 If the receiver is in possession of real or personal property sub-  
163 ject to a lease, mortgage or security interest which the receiver is  
164 permitted to avoid, and if the possession of said property is neces-  
165 sary for the continued operation of the hospital the receiver shall  
166 apply to the court to set a reasonable rental, price or rate of  
167 interest to be paid by the receiver to the person entitled thereto  
168 during the duration of the receivership. The court shall hold a  
169 hearing on the application within fifteen days. The receiver shall  
170 send notice of the application to any owners of record and to  
171 mortgagees and other secured parties and lienholders of record of  
172 the property involved at least ten days prior to the hearing. In no  
173 event shall the amount set by the court exceed what is reasonable  
174 for the hospital. Payment by the receiver of the amount deter-  
175 mined by the court to be reasonable shall be a defense to any  
176 action against the receiver for payment or for the possession of

177 said property subject to the lease, mortgages or security interest  
178 involved by any person who received such notice.

179 Notwithstanding the foregoing, there shall be no foreclosure or  
180 eviction during the receivership period where such foreclosure or  
181 eviction would, in the view of the court, serve to defeat the pur-  
182 pose of the receivership.

183 Section 70J. A receivership shall not be terminated if a license  
184 to operate the facility would not be in effect upon termination; or  
185 the hospital would revert to the licensee during the pendency of  
186 proceedings to revoke, deny, or suspend its license; or the hospital  
187 revert to it person not approved for licensure by the department.

188 The receivership may be terminated by the court upon the peti-  
189 tion of the receiver, the attorney-general, or any other interested  
190 party provided that the court finds that the deficiencies or prob-  
191 lems that were the cause of the receivership have been remedied  
192 or eliminated. This would take place when the threat to the lives,  
193 health, or safety of the residents of the area have been eliminated;  
194 when access to care has been secured; or when costs of care have  
195 been sufficiently contained through other means.

196 A temporary receivership shall not exceed five years.

197 Section 70K. No person shall bring an action against a receiver  
198 appointed under section seventy G without first securing leave of  
199 court. The receiver shall be liable in his personal capacity for  
200 gross negligence or intentional wrongdoing. In all other cases, the  
201 receiver shall be liable in his official capacity only, and any judg-  
202 ment rendered shall be satisfied out of the receivership assets.

203 Section 70L. An order appointing a receiver under section  
204 seventy G shall have the effect of a license for the duration of the  
205 receivership. The receiver shall be responsible to the court for the  
206 conduct of the hospital during the receivership, and any violation  
207 of regulations governing the conduct of the hospital, if not  
208 promptly corrected, shall be reported by the department to the  
209 court.

210 Section 70M. The department is hereby authorized and directed  
211 to promulgate rules and regulations necessary for the implementa-  
212 tion of sections seventy G to seventy L, inclusive.

1 SECTION 3. Said chapter 111 is hereby further amended by  
2 inserting after section 72Q the following section:—

3 Section 72Q½. The court shall set a reasonable compensation  
4 for the receiver and shall require the receiver to furnish a bond.  
5 Such expenses shall be paid from the revenues of the hospital. The  
6 licensee shall be liable for any adjustment to the hospital's rate  
7 that is necessitated by the provisions of the first paragraph of this  
8 section.

9 The commonwealth shall have a lien for any expenditure under  
10 section seventy H upon the following property: the building in  
11 which the hospital is located; the land on which the hospital is  
12 located; any fixtures, equipment or goods used in the operation of  
13 the hospital. Such lien shall be prior to any mortgage or lien  
14 which the court finds has been executed or obtained for a fraudu-  
15 lent purpose or to hinder or delay creditors. Such lien shall also be  
16 prior to a mortgage or lien held by any person with an ownership  
17 interest in the hospital; or any person which controls or has the  
18 ability to directly or indirectly control to any significant degree  
19 the management of policies of the licensee or the hospital; or any  
20 person related to the licensee or to the hospital by any significant  
21 degree of common ownership or common control. The receiver  
22 shall cause notice of any lien created hereunder to be duly filed.

23 As an additional remedy for recouping commonwealth expendi-  
24 tures, the licensee, persons responsible for the affairs of the  
25 licensee, or the owner, may be held liable for such expenditures to  
26 the extent that any of these persons benefits financially from the  
27 expenditure. Recoupment shall also be available against any  
28 person who, prior to the appointment of the receiver, breached a  
29 legal responsibility to assure appropriate maintenance of the hos-  
30 pital, if such breach necessitated the expenditure by the common-  
31 wealth, and against any person who was responsible for an  
32 abandonment of the hospital.

1 SECTION 4. Chapter 118F of the General Laws is hereby  
2 amended by adding the following two sections:—

3 Section 21. 1. There is hereby established an essential acute  
4 hospital stabilization and preservation trust fund which shall be  
5 administered and expended by the division of health care, finance  
6 and policy (DHCFP).



7 The fund shall consist of all sums collected under an essential  
8 hospital preservation assessment levied annually and amounting to  
9 0.25 percent of total annual revenue for each acute hospital oper-  
10 ating in the commonwealth.

11 To keep the accumulated trust fund's value from exceeding 1.0  
12 percent of statewide acute hospital revenue, the assessment shall  
13 be reduced or eliminated in any year in which the accumulated  
14 trust fund is expected to exceed 1.0 percent of state-wide total  
15 acute hospital revenue. The assessment shall be reduced as needed  
16 in any year in which an assessment smaller than 0.25 percent will  
17 bring the trust fund to 1.0 percent of statewide total acute hospital  
18 revenue.

19 In the event that a shortfall arises, and the fund is unable to  
20 meet all of its obligations, the commissioner of DHCFP will  
21 notify the commissioner of public health, and, at the direction of  
22 the commissioner of public health, the commissioner of DHCFP  
23 will make special binding uniform proportionate assessments on  
24 all hospitals to generate funds needed. Such assessments will not  
25 exceed 25 percent of total expenses, averaged over the past three  
26 years, of the hospitals in receivership.

27 The trust fund shall be used solely for stabilizing and pre-  
28 serving essential hospitals determined to be in danger of closing  
29 or reducing needed services. Stabilization and preservation assis-  
30 tance may take either of these two forms:

31 (a) financing for technical and administrative assistance for  
32 hospitals needing reorganization, and

33 (b) partial underwriting of capital and operating costs to stabi-  
34 lize needed but financially distressed hospitals.

35 2. The commissioner of DHCFP shall, if necessary, obtain addi-  
36 tional funds for the purposes described in the previous subsection  
37 through a reallocation, in favor of financially distressed but  
38 needed hospitals, of distributions from the hospital free care pool.

39 Section 22. 1. Any hospital which appears on the department of  
40 public health's annual listing of essential acute hospitals may peti-  
41 tion the DHCFP for funding for technical and administrative  
42 assistance, or for grants towards capital or operating costs. The  
43 DHCFP will determine whether such assistance or grants are  
44 essential or important to the survival of an entire essential hospital  
45 or the survival of listed essential services at a particular hospital.

46 At the initiative of the commissioner of DHCFP, of the speaker  
47 of the Massachusetts house, of the president of the Massachusetts  
48 senate, of the administrator or receiver of the hospital, of the  
49 trustees of the hospital, or of a patient residing in a hospital's pri-  
50 mary service area or of the guardian of such a patient, the depart-  
51 ment of public health shall undertake a redetermination of  
52 whether a hospital previously excluded from the annual listing of  
53 essential acute hospitals deserves to be placed on that list.

54 At the initiative of the commissioner of DHCFP, of the com-  
55 missioner of public health, or of a patient residing in a hospital's  
56 primary service area or of the guardian of such a patient, the  
57 DHCFP shall also undertake determination of the need for tech-  
58 nical assistance or grants for a particular hospital.

59 3. The DHCFP shall identify accounting firms, law firms, hos-  
60 pital administration consultants and other needed experts with  
61 whom it may contract as needed to provide technical and adminis-  
62 trative assistance to essential hospitals in danger of closing or to  
63 hospitals where essential services are in danger of closing.